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FBI FOR THE DIRECTOR  
DOJ FOR INTERNATIONAL OPERATIONS UNIT CHIEF STUART WIRTZ

E.O. 12958: DECL: 08/10/2016  
TAGS: PTER KJUS ASEC PGOV ETTC CVIS PREL KHLS GM  
SUBJECT: SCENESETTER: FBI DIRECTOR MUELLER'S BERLIN VISIT

REF: BERLIN 1995

Classified By: Acting Deputy Chief of Mission John K. Bauman  
for reasons 1.4 (b) and (d).

¶1. (C) Summary. German officials welcome your visit to Berlin to show the strength of U.S.-German law enforcement and counterterrorism cooperation; we want you to use the visit to strengthen it further. You can underscore to nearly all key law enforcement decision-makers the need for uncomplicated data exchange to fight common threats. While Germany is enhancing data exchange with its EU partners, the Germans have been reluctant to consider ways to enhance similar data-sharing with the U.S. The new German government, with Interior Minister Wolfgang Schaeuble in the lead, is further improving its counterterrorism laws and so Schaeuble who travels to Washington a week after your visit, may be particularly receptive to your message. End Summary.

Interior Minister Wolfgang Schaeuble

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¶2. (C) Your meeting with Minister Schaeuble sets the stage for his visit to Washington one week later. In DC, Schaeuble will meet Vice President Cheney, Attorney General Gonzales, Homeland Security Secretary Chertoff, and Congressional leaders. Schaeuble, one of the icons of the German Christian Democratic Party (CDU), succeeded Helmut Kohl as CDU chairman, and was considered a shoe-in also to succeed Kohl as Chancellor, when a campaign finance scandal hurt them both and led to Social Democrat Gerhard Schroeder's September 1998 election victory. Schaeuble is confined to a wheelchair due to an assassination attempt in October 1990, nine days after reunification, by a mentally unstable person. Schaeuble, also Interior Minister at that time, worked closely with U.S. officials as one of the architects of German reunification. Schaeuble is a staunch transatlanticist and is considered the CDU's foremost strategic thinker. His areas of expertise include foreign and security policy, and he had actually been named as "shadow" foreign and defense minister during the 2005 election campaign that resulted in the CDU returning to power as senior partner in the current Grand Coalition.

¶3. (C) Schaeuble is outspoken in the coalition government with the Social Democrats in urging more aggressive German counterterrorism actions. His stances sometimes attract criticism even from fellow ministers (e.g., Justice Minister Zypries), but he persists and often prevails; below in para eight is a list of legal reforms his Ministry is pursuing, sometimes by pushing the Justice Ministry as far as it will go. Schaeuble defends interrogations to prevent terrorism -- Zypries does not. On the other hand, like Chancellor Merkel, Schaeuble speaks out against Guantanamo.

¶4. (C) Given Schaeuble's counterterrorism and trans-Atlantic convictions, he may be willing and able to break logjams and find new ways to work more closely with the U.S. He has instructed his staff, for example, to find a way to bilaterally share airline Passenger Name Records (PNR) data with the U.S., in case the EU is unable to re-establish a legal basis for PNR data sharing before the September 30 EU court-imposed deadline. The German data privacy commissioner opposes the move and claims it cannot be done legally, but Schaeuble told his ministry to find a legal way to do it.

#### Counterterrorism Landscape

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¶5. (S) The July 6 arrest of Redouane El Habhab and the July 31 discovery of unexploded suitcase bombs in German trains has kept the issue of terrorist threats prominently featured in German newspapers. German counterterrorism experts, including the leadership figures you will meet, are conscious of the risks Germany faces. Polls tend to reveal, however, that the German public is not as concerned about terrorism as are citizens of EU neighbors such as the UK or the Netherlands. Bilateral counterterrorism cooperation is very strong, although there are limits and obstacles.

¶6. (S) Press allegations and exaggerations (e.g., renditions, secret detention centers, German assistance to the U.S.

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during the Iraq war) have negatively affected informal information sharing. A Bundestag Investigation Committee is researching these issues; German officials tell us they sometimes spend half their day reviewing old files for relevant information to provide to the Committee. The creation of the committee has also cast a shadow over some informal information sharing, which officials now fear the press or the Bundestag may later reveal, rendering German officials personally liable. Some German law enforcement offices that used to provide information quickly and informally now require U.S. Letters Rogatory.

¶7. (C) Another concern is EU Data Privacy policy. Proposed EU regulations might be used to require data privacy officer case-by-case approval of law enforcement data sharing. This possibility could significantly disrupt information sharing. At the same time, a German initiative -- the so-called Pruem agreements -- tightens law enforcement cooperation with select EU partners, enabling, for example, nearly instant sharing of fingerprints and other key data. German leaders need to understand how illogical and unwise it is for Germany to take these steps with its EU partners, while degrading cooperation with the U.S.

#### Counterterrorism: Legal Landscape

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¶8. (C) The Christian Democrat - Social Democrat German coalition government took office November 2005 with a pledge to strengthen Germany's counterterrorism laws. The first results are in and there is more to come.

-- A draft law broadens and simplifies the three German security agencies' access to airline, European travel, vehicle, bank, delivery and telecom data, and renews sunset provisions from post-9/11 laws set to expire January 2007. The government plans to present the draft bill to the Bundestag this fall and see it enacted by the end of the year.

-- A Constitutional Reform package grants the Federal Office of Criminal Investigation (BKA) expanded preventative powers in terrorism investigations. The reform still requires implementing legislation, however.

-- A new law implementing the EU Arrest Warrant took effect August 2. The Constitutional Court voided the previous law July 2005 and called for better extradition protections for German nationals, which the new law includes. German

officials tell us they will now act on the Spanish extradition request of Mamoun Darkazanli, a Hamburg based German-Syrian national and suspected al-Qaida financier.

-- The Interior Ministry is drafting a bill to broaden the Ministry's ability to ban organizations. In 2005, a court overturned the ban of a PKK-linked publication. The Ministry is rewriting the law to reimpose the ban.

-- The Interior Ministry is drafting a bill to create a combined terrorist database for the German interagency Joint Counterterrorism Center (GTAZ) to simplify information sharing (police/security service and federal/state).

-- The Justice Ministry drafted a bill broadening the ability to turn state's evidence and another bill to regularize plea bargaining. The Ministry states both bills aim to give prosecutors additional tools to obtain convictions.

-- The government also plans to draft a new Aviation and Maritime Security bill to address terrorist threats from the sky and from the seas.

¶ 9. (C) Some of the changes above address U.S. priorities. Other changes we seek are in our suggested points for you (below). Others include longer prison sentences, lower burdens of proof for asset freezes and convictions, tighter laws against leaking classified information, and less onerous data privacy rules. In addition, a DoJ priority is the creation of a way for classified material to be used and protected in court.

¶ 10. (U) The July the U.S. Senate ratified the U.S.-German Mutual Legal Assistance Treaty. The Bundestag is to ratify it in October. This agreement -- and the US-EU Agreements on Mutual Legal Assistance and Extradition -- will improve and simplify U.S.-German legal cooperation. The President is expected to send the US-EU agreement to the Senate for ratification soon.

Points to Make

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¶ 11. (S) We propose you make the following points in your meetings in Germany.

-- Effective law enforcement cooperation requires the ability to informally share information. We applaud tighter German cooperation with its EU partners, which shows German commitment to our shared counterterrorism and law enforcement objectives. But for Germany to take these steps while at the same time complicating U.S.-German cooperation with data privacy and other concerns makes no sense.

-- A valuable 9/11 lesson is the need to share information across bureaucratic lines. The U.S. and Germany have learned this lesson because the U.S. has its NCTC, and Germany its GTAZ, where data is exchanged like never before. Similarly, we should systematically share information internationally. We could thwart terrorist acts in Germany by preventing the entry into Germany of those the U.S. believes to be terrorists, and vice versa. We are prepared to be as flexible as possible in how we implement such a program.

-- Separately, we have sought exchange of fingerprint data, which we know poses a challenge. Biometrics, however, are the future of law enforcement data, and Germany is enabling sharing with EU partners. The vast U.S.-German trade, investment, and travel argue for at least as much U.S.-German cooperation.

-- The Madrid and London bombings drove home the threat of "home-grown" terrorists. Germany has one of the largest Muslim population in Europe -- 3.2 million, 2.4 million of whom are Turkish. Minister Schaeuble are organized Germany's first high-level "summit" with German Muslim leaders in late September (after your visit) which will include some known to have extremist views, such as Milli Gurus. You should ask him about it.

-- In your meeting with the Federal Office for the Protection  
of the Constitution (BfV - domestic security service) you  
should address concerns about the Chinese and Russian  
espionage.

TIMKEN JR